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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-205590.2

DATE: February 9, 1982

MATTER OF: American Environmental Services -
Reconsideration

DIGEST:

Prior decision denying protest is affirmed because protester has failed to establish decision was based on erroneous interpretation of fact or law.

American Environmental Services requests that we reconsider our decision American Environmental Services, B-205590, December 23, 1981, 81-2 CPD ____ in which we summarily denied American's objections regarding the award of a contract for the removal and destruction of hazardous waste from the Walter Reed Army Medical Center. We affirm our prior decision.

In its initial protest to our Office, American questioned whether the low bidder was licensed to haul hazardous waste and whether it intended to use a pathological incinerator approved by the U.S. Environmental Protection Agency (EPA) for the destruction of hazardous waste. American contended that if the low bidder was not so licensed it should be considered an unqualified bidder. We denied American's protest, because questions regarding whether a bidder intends to comply with Federal, State or local licensing requirements need not be considered in determining the bidder's eligibility for award unless there is a solicitation provision which requires the bidder to possess a specific license or permit. See Jekyll Towing and Marine Services Corporation, B-199199, December 2, 1980, 80-2 CPD 413; Washington Patrol Service, Inc., B-195900, August 19, 1980, 80-2 CPD 132. As there was no requirement in the solicitation that a bidder possess a specific license or permit, we determined the lack of a permit or license alleged to be necessary by American was not a bar to an award of the contract to the low bidder.

American disagrees with our position that whether a bidder intends to comply with Federal, State or local licensing requirements is a question which need not be considered in determining a bidder's eligibility for a contract award. American argues that EPA regulations are very specific regarding the removal and disposal of hazardous waste and that the regulations charge the waste generator, Walter Reed Army Medical Center, with insuring that the waste is disposed of in accordance with EPA requirements. American further argues that "no firm can operate in the area of transporting, storing or disposing of hazardous waste without being fully permitted by the Federal, State or local authorities."

American has misinterpreted our decision. We did not hold that there were no specific Federal, State or local requirements governing the generation, transportation and disposal of hazardous waste. Our decision merely held that in the absence of a solicitation provision requiring that a bidder possess a specific license or permit, the contracting officer need not consider whether the bidder intends to comply with licensing requirements imposed by Federal, State or local authorities in determining the bidder's eligibility for an award. Our holding recognizes the fact that contracting officers are generally not competent to pass on what licensing requirements are applicable or whether a bidder is in compliance with the applicable requirements. Rather, such questions are matters between the bidder and the licensing authority. E.I.L. Instruments, Inc., 54 Comp. Gen. 480 (1974), 74-2 CPD 339

As American has not established that our prior decision was based on an erroneous interpretation of either fact or law, our decision is affirmed. Federal Sales Service, Inc. - Reconsideration, B-198452, June 16, 1980, 80-1 CPD 418.

for Milton J. Acola
Comptroller General
of the United States